REMARKS:

In the foregoing amendments, claim 9 was amended to better define that the rocking stroke of the locking lever travels along an arched path between the first and second endpoints. Editorial changes were made to claims 6 and 9. Claims 10 and 11 were added to the application. Accordingly, claims 6-11 are in the application for consideration by the examiner at this time.

Claims 6-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent No. 4,641,545 of Rabe in view of U.S. patent No. 6,352,133 of Ojima. The teachings of Rabe were previously cited against applicant's claims. The teachings of Ojima were newly cited against applicant's claims. The Official action stated that, among other things, Rabe teaches a linkage (26) that links the locking lever and the control selector (clutch see column 2, line 53) together; where the locking lever and the linkage provide a rocking stroke for operating the locking lever, and where the linkage includes an idle motion stroke mechanism (26) for switching controllable and uncontrollable states at a point of the rocking stroke of the locking lever and for idling between the point of the rocking stroke and a first endpoint of the rocking stroke of the locking lever. The Official action continued that the linkage further includes a mechanism (64) engaging the output lever of the locking lever for pulling or pushing the intermediate rocking lever link between the point of the rocking stroke and a second endpoint of the rocking stroke of the locking lever and for

idling motion of the intermediate rocking lever between the point of the rocking stroke and the first endpoint of the rocking stroke of the locking lever.

The Official action acknowledged that Rabe does not disclose the idle motion stroke occurs at a midway point of the rocking stroke; nor the locking lever blocks operator passage through the passageway when switched to the controllable state and permits operator passage through the passageway and when switched to the uncontrollable state. However, the Official action cited the teachings of Ojima as showing a locking lever (29) blocking operator passage (position A) through the passageway when switched to the controllable state and permitting operator passage through the passageway and when switched to the uncontrollable state (position B).

The Official action concluded that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the arcuate groove of Rabe so that the inaction portion occurs at a midway point for design functionality, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only, routine skill in the art. The Official action also stated that the to modify the apparatus of Rabe so as to provide the lever in a blocking position during a controllable state and in a non-blocking position during an uncontrollable state would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Ojima that such an arrangement improves the ability to prevent the operator of the

operator's seat from inadvertently getting off the cab (see column 8, line 51, in Ojima).

Applicant respectfully submits that the teachings of Rabe and Ojima, either taken alone or together, do not disclose or suggest the invention as set forth in the present claims within the meaning of 35 U.S.C. §103(a) for least the following reasons.

Applicant's claims require, among other things, that the control selector lever switches the working implement drive control system between controllable and uncontrollable states by operating the locking lever. The linkage of applicant's claims places the control selector lever in a controllable state at the first endpoint of the arched path of the locking lever. Further, the linkage of applicant's claims idles the control selector lever in the midway area (or position) and from the midway area (or position) to the second endpoint of the arched path of the locking lever, so that the control selector lever is in the uncontrollable state in the midway area (or position) and from the midway area (or position) to the second endpoint of the arched path of the locking lever. In other words, applicant's claims require, among other things, that the locking lever travels along an arched path between first and second endpoints and through a midway area (or position) arranged between the first and second endpoints. At the first endpoint of the arched path of the locking lever, applicant's claims require that the control selector lever is in the controllable state and, at the second endpoint of the arched path of the locking lever, the

control selector lever is in the uncontrollable state. Applicant's claims also require that at the midway area (or position) and between the midway area (or position) and the second endpoint of the arched path of the locking lever, the linkage idles; so that the control lever is in the uncontrollable state.

The teachings of Rabe cannot disclose or suggest this structure and function of applicant's claims. The teachings of Rabe propose a single control lever 12 for engagement of a drive clutch for forward operation and for engagement of a drive clutch for rearward operation. In the arrangement shown in figure 2 of Rabe, the control lever 12 is arranged at one end of its travel path for forward operation; and in the arrangement shown in figure 3 of Rabe, the control lever 12 is arranged at the other end of its travel path for rearward operation. Thus, at both ends of the travel path of the control lever 12 of Rabe, the combine harvester proposed therein is in a controllable state. Therefore, the structure proposed in Rabe cannot contemplate or suggest a second endpoint of travel for the locking lever, where the control lever is in the uncontrollable state, as required in applicant's claims.

The Official action acknowledged the aforesaid deficiency in the teachings of Rabe, when it stated that Rabe does not disclose the idle motion stroke occurs at a midway point of the rocking stroke. The Official action stated that it would have been obvious to modify the arcuate groove of Rabe, so that the inaction portion occurs in the midway point for design functionality, since it has been held that where the general conditions of a claim are disclosed in the

prior art, discovering the optimal more workable ranges involves only routine skill in the art. Applicant respectfully submits that this argument of law is not pertinent in the present factual situation, because the prior art does not suggest the structure and function of an inaction portion in the midway point along the paths proposed in Rabe. One of ordinary skill in the art cannot optimize from a vacuum. Since the teachings of Rabe do not contemplate or suggest the general conditions or structure of applicant's claims, there is nothing for one of ordinary skill in the art to optimize, in order to arrive at the presently claimed invention.

It is well established in patent law that there must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination or modification. That knowledge cannot come from the applicant's invention itself. *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 678-79, 7 USPQ2d 1315, 1318 (Fed. Cir. 1988); *In re Geiger*, 815 F.2d 686, 687, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987); *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1147, 227 USPQ 543, 551 (Fed. Cir. 1985). Since there is no prior art of record suggesting that at the midway area (or position) and between the midway area (or position) and the second endpoint of the arched path of the locking lever, the linkage is idled, so that the control lever is in the uncontrollable state, as required in the present claims; this aspect of applicant's claimed invention cannot be obvious.

The Official action also stated that it would have been obvious to modify the apparatus of Rabe so as to provide the lever in a blocking position during a controllable state and in a non-blocking position during an uncontrollable state in view of the teachings of Ojima. However, applicant respectfully submits that the combination of the teachings of Rabe and Ojima cannot suggest the presently claimed invention to one of ordinary skill in the art.

As discussed above, the teachings of Rabe propose a single control lever 12 for engagement of a drive clutch for forward operation and for engagement of a drive clutch for rearward operation. In Rabe, figure 1 shows the control lever 12 in the neutral position, figure 2 shows the control lever 12 is upwardly arranged at one end of its travel path for forward operation, and figure 3 shows the control lever 12 is downwardly arranged at the other end of its travel path for rearward operation. Figure 8 or the cover page of Ojima shows the entrance gating lever 29 arranged upwardly in the open position (B) and arrange downwardly in the blocking position (A). The arrangement of the entrance gating lever 29 in the teachings of Ojima is opposite to the arrangement of the control lever 12 proposed of Rabe, and therefore, one of ordinary skill the art would not combine these teachings in the manner proposed in the outstanding Office action. In other words, the blocking position (A) of the entrance gating lever 29 in Ojima (the device is controllable and operational) corresponds to the neutral position of control lever 12 shown in figure 1 of Rabe (the device is not controllable and not operational). On the other hand, the open position (B) of

the entrance gating lever 29 in Ojima (the device is not controllable and not operational) corresponds to the forward engagement position of control lever 12 shown in figure 2 of Rabe (the device is controllable and operational). There is absolutely no reason why or how one of ordinary skill in the art would combine these opposite arrangements for the control lever. Applicant respectfully submit that it is impermissible within the framework of 35 U.S.C. §103 to select a single line or two of a reference in total disregard for the remaining teachings of the reference and then rely upon the reference with the benefit of hindsight to show obviousness. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 230 USPQ 416, 419 (Fed. Cir. 1986); *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965); *In re Mercer*, 185 USPQ 774, 778 (CCPA 1975).

New claim 10 requires the switching of a pilot circuit. The teachings of Rabe and Ojima do not contemplate or suggest switching a pilot circuit on and off, or between controllable and uncontrollable states, as required in claim 10.

New claim 11 requires that the linkage *directly and independently* links the locking lever and the control selector lever together. The teachings of Rabe or Ojima do not contemplate or suggest this structure of the invention. For example, in the device proposed by Ojima, the lock mechanism 32 includes an entrance gating lever 29 and a mechanical linkage, which work together to unlock the console 24 when the lock mechanism 32 is in the blocking position (A). Thus, the device proposed by Ojima is much more complicated than the structure in applicant's claims. Applicant respectfully submits that the device

proposed by Ojima will suffer the same deficiencies as discussed in the paragraph bridging pages 2 and 3 of the present specification concerning the prior art devices.

With respect to the teachings of Rabe, in the device proposed therein, upward movement of the control lever 12 moves the control lever extension portion 22 to engage the drive clutch in the drive train for maintained forward operation of the header conveyors (See column 3, lines 38-40, of Rabe). Compare, for example, the location of the control lever extension portion 22 in figures 1 and 2 of Rabe. On the other hand, downward movement of the control lever 12 (i.e., from the position shown in figure 1 of Rabe to the position shown in figure 3 of Rabe) results in movement of extension 30 of the secondary lever 26 by means of a sheathed cable arrangement 32 to a clutch in the drive train for reverse operation of the header conveyors (See column 3, lines 38-40, of Rabe). Accordingly, the control arrangement proposed in Rabe does not control pilot pressure, as required in claim 10; and the control lever 12 is not *independently and directly* linked to a pilot circuit of the working implement drive control system that switches between controllable and uncontrollable states by operation of the locking lever, as required in claim 11.

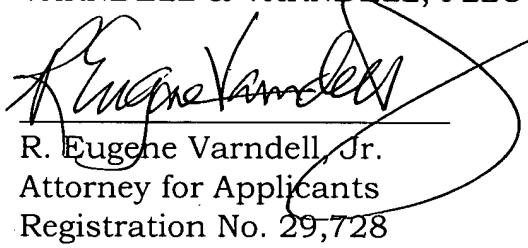
In view the foregoing amendments and remarks, applicant respectfully submits that claim 6-11 are patently distinguishable from the teachings of Rabe and/or Ojima within the meaning of 35 U.S.C. §103(a). Therefore,

applicant respectfully requests that the examiner reconsider and withdraw this rejection.

The foregoing is believed to be a complete and proper response to the Official action mailed October 20, 2004. While it is believed that all the claims in this application are in condition for allowance, should the examiner have any comments or questions, it is respectfully requested that the undersigned be telephoned at the below listed number to resolve any outstanding issues.

In the event this paper is not timely filed, applicant hereby petitions for an appropriate extension of time. The fee therefor, as well as any other fees which become due, may be charged to our deposit account No. 22-0256.

Respectfully submitted,
VARNDELL & VARNDELL, PLLC



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